IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE No.: CEA No.23 of 2007
DATE OF DECISION: 30.10.2007

Commissioner of Central Excise Commissionerate, Chandigarh. .....Appellant

VERSUS

M/s C.N.C.Coomercial Ltd., ...Respondent
Village & P.O.Mubarikpur,
Behind Industrial Focal Point,
Derabassi, Distt. Mohali (Punjab)

CORAM: HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjiv Kaushik, Advocate
for the appellant.

M.M.KUMAR

This order shall dispose of CEA No. 174 of 2006 and CEA No.23 of 2007 because the appellant-revenue has claimed a similar question of law in both the cases, which is as under:-

> *Whether in the absence of availability of sufficient balance to reverse the cenvat credit involved on the inputs lying in stock, inputs in process and inputs contained in finished goods at the time of opting out of cenvat credit scheme is required to be paid through cash payment/PLA or not?*

For convenience facts are being referred from CEA No.23 of 2007. The assessee-respondent are engaged in the manufacture of plywood, block board, core veneer, flush doors etc. falling under Chapter 44 of the First Schedule appended to the Central Excise Tariff Act, 1985. On 28.3.2003, Central Excise Staff visited the premises of the assessee-respondent and they observed that w.e.f. 1.4.2001 they had opted for Small Scale exemption under notification No.08/2001-CE dated 1.4.2001 which provided for clearance of goods at Nil rate of duty by availing the SSI exemption in terms of the notification. The appellant-revenue took the view that in terms of Rule 57 AG (2) of the Central Excise Rules, 1944 the assessee-respondent were required to

pay back/reverse the cenvat credit availed on the inputs, inputs in process and inputs contained in the finished goods lying in stock on the date of exercise of option out of Cenvat Credit Scheme. According to the appellant-revenue, the assessee-respondent had in stock the inputs as well as inputs contained in final product. Alleging that the assessee-respondent was required to reverse the cenvat credit which they failed to do a demand amounting to Rs.88,731/- was raised. Besides the aforementioned demand another demand of Rs.62,907/- was also raised vide order in original dated 12.3.2004.

The assessee-respondent filed an appeal before the Commissioner (Appeals) who vide his order dated 16.6.2004 upheld the demand of Rs.62,907/- but set aside the demand of Rs.88,731/- and he also reduced the penalty from Rs.1,51,638/- to Rs.5000/-. The view of the Commissioner (Appeals) is discernible in the last two paras of the order dated 16.6.2004 (P-2). He has held that the order in original dated 12.3.2004 passed by the Commissioner (Appeals) was not sustainable in law confirming the demand for Cenvat credit in respect of inputs lying in stock, inputs contained in finished goods lying in stock as such on 31.3.2001 because the assessee-appellant had correctly availed and utilized the credit of duty paid on those inputs for payment of duty on the final products. When these final products were chargeable to excise duty during the material period, therefore, the appellant-respondents were not required to reverse the cenvat credit of Rs.88,731/-. The Commissioner (Appeals) placed reliance on the judgment of the Hon'ble Supreme Court in CCE Vs. M/s Dai Ichi Karkaria Ltd., reported as 1999(112) ELT 353(SC) and set aside the order passed by the Commissioner (Appeals) and also reduced the penalty to Rs.5000/-

On further appeal filed before the Customs, Excise & Service Tax Appellate Tribunal, New Delhi, the order passed by the Commissioner (Appeals) was upheld and the appeal of the appellant-revenue was dismissed.

The Tribunal has further placed reliance on a judgment of the Hon'ble Supreme Court in the case of *Albert David Ltd. Vs. Commissioner*, 2003 (157) ELT A81 (SC).

We have heard the learned counsel for the appellant-revenue at a considerable length and find that no question of law warranting admission of the appeal would arise. There are findings of fact recorded by the Commissioner (Appeals) as upheld by the Tribunal to the effect that the assessee-respondent had correctly availed and utilized the credit of duty paid by them on those inputs when these final products were chargeable to excise duty. It has further been found that there was no one to one relationship of the inputs used and the final products manufactured and cleared from the factory. It has rightly been held that the credit of duty paid on inputs cannot be confined to a particular raw-material to which the credit is related and out of which a final product is manufactured. Therefore, it has been rightly held that the assessee-respondent were not required to reverse the cenvat credit of Rs.88,731/-. The judgment of the Hon'ble Supreme Court in Dai Ichi Karkaria's case has been correctly applied. There is thus no merit in these appeals which are accordingly dismissed.

(M.M.KUMAR)
JUDGE

30.10.2007 **(AJAY KUMAR MITTAL)**
Vimal **JUDGE**